

REMARKS

The Official Action mailed June 20, 2008 has been carefully considered. Reconsideration and allowance of the subject application are respectfully requested.

In the Office Action of June 20, 2008, at page 6, paragraph 19, it was noted that this application is a continuation of U.S. Appl. 10/805,784. This is incorrect. This application is a divisional of U.S. Appl. 09/994,603 filed November 6, 2001 which application claims priority to German Patent Application No. 100 54 874.1 filed November 6, 2000.

With that in mind, on its face, the next sentence in paragraph 19 can not possibly be accurate when stating that the claims of the present application are “drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application.” The Office Action then elected to make the first action on the merits a final office action under MPEP 706.07(b).

The present application is U.S. 10/805,784. Applicants therefore respectfully request that pursuant to MPEP 706.07(c) and 706.07(d), and on this basis alone, the first (final) action on the merits be withdrawn as premature.

Furthermore, under MPEP 706.07(b), the claims of a new application may be finally rejected where “the new application is a continuation application of, or a substitute for, an earlier application, and all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application.

Prior to the Office Action of June 20, 2008, Applicants amended claim 18 as follows, and have bolded and underlined the amendments to the claims as amended:

Claim 18. A fuel container ~~of plastic material~~ comprising;

a **plastic** container body **consisting of** ~~having~~ two sections, each section having wall portions, said wall portions having inner and outer wall surfaces, said inner wall surface of one section joined to said outer wall surface of the other section by first and second

welded seams, wherein said first and second welded seams are separated by a duct, said duct extending in the longitudinal direction of said wall portions, and
means for filling the duct with air and venting same of air,
wherein said two sections comprise first and second shell portions and wherein said shell portions are obtained from a molded container.

At page 3 of the Office Action of June 20, 2008, when seeking to read claim 18 on the art of Stromsoe, the Office Action (at paragraph 7) stated that “Stromsoe shows a plastic (col. 2, line 51) container body (25) **having** two sections (40, 42), each sections having wall portions...”.

As noted above, claim 18 had been amended to use of the term “consisting of”, which triggers a different claim scope consideration than the term “having” as recited in the Office Action. Applicants respectfully submit that this also, on its own, established that the invention as claimed was not the same invention claimed in an earlier application. Not surprisingly, there was then no discussion of Applicants use of the terms “consisting of” and Applicants arguments at page 11 that the use of such transitional phrase had the effect of precluding a reading of Stromsoe on the amended claim. Accordingly, this is believed to be a second reason why the first action final rejection under MPEP 706.07(b) should be found as premature and withdrawn.

Furthermore, the Office Action of June 20, 2008 went on to write that in Stromsoe, the inner wall surface of one section is joined to the outer wall section of the other section by “first (46) and second (50) welded seams.” This is completely inconsistent with Stromsoe’s disclosure where it is written that item 46 is an accumulation of internal coating when the two pipe sections are brought together in engagement. Col. 4, lines 54-58 of Stromsoe. Item 46 therefore does not identify a welded seam. Applicants therefore respectfully submit that quite apart from the request for reconsideration and withdrawal of the first action final rejection, a prima facie case was not established demonstrating that claim 18 was somehow anticipated under 35 USC 102, thereby requiring any sort of substantive response from Applicants.

In sum, Applicants respectfully request reconsideration and withdrawal of the first action final rejection. In addition, to the extent that it is still believed a rejection under 35 USC 102 is somehow applicable, Applicants would respectfully request consideration of the remarks above

AMENDMENT AFTER FINAL OFFICE ACTION

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pointing out that item 46 of Stromsoe is not a welded seam and should not be applied to pending claim 18 in the manner currently of record.

Furthermore, Applicants did file an Amendment After Final on October 6, 2008, seeking reconsideration of the first action final rejection. While Applicants recognize that an amendment after final is entered on a discretionary basis, it was hoped that in the present case, reconsideration would have been granted. Since Applicants received nothing further, the present RCE was necessary. Applicants therefore again respectfully request that the Examiner reconsider the first action final rejection of June 20, 2008 and that if the first action final rejection of June 20, 2008 is withdrawn, there be a waiver of the herein RCE fees and extension fees.

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any additional fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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